

**Subject:** The CDC Public Health Law News, Wednesday, December 8, 2004



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From the Public Health Law Program, Office of the Chief of Public Health Practice, CDC

<http://www.phppo.cdc.gov/od/phlp/>

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**\*\*\* Welcome, Costa Rica.** With the addition of Costa Rica, the *CDC Public Health Law News* now circulates to subscribers in all 50 U.S. states and in 30 other countries. Tell your friends and colleagues about the *News*. Free subscriptions are available at <http://www.cdc.gov/subscribe.html>.

**\*\*\* The Weekly Reading (Number 16):** "The Path of the Law," by Oliver Wendell Holmes, Jr. (see below). This is the 16th of 26 installments in our series of illustrative readings in public health law. For links to past readings, visit our web site at <http://www.phppo.cdc.gov/od/PHLP/PHlawreadings.asp>.

**\*\*\* Update.** On November 24, 2004, the Illinois Supreme Court granted the Illinois Department of Health's petition for leave to appeal the appellate court decision in *Southern Illinoisan v. Ill. Dept. of Public Health*, a case covered in last week's issue of the *News*. We will provide further updates after the Illinois Supreme Court hears the case. For more information, see last week's edition or visit <http://www.state.il.us/court/Opinions/AppellateCourt/2004/5thDistrict/June/Html/5020836.htm>.

## **States and Localities**

1. Alaska: Health law may get an update
2. New York: Schools will reward kids who eat right

## **National**

3. Auto recall efforts under scrutiny
4. Cigarette taxes rising across the country
5. HHS: German flu vaccine safe for U.S.
6. Risky riders touting freedom, bikers take aim at helmet laws
7. These routes aren't made for walking

## **International**

8. Global anti-tobacco treaty will come into force in 2005

## **Briefly Noted**

Florida Botox investigation · Minnesota light cigarette lawsuit · Oklahoma university alcohol ban · FDA drug monitoring · New FDA rules · Rat poison lawsuit · Flu shot surplus · Flu shot eligibility items · AIDS in Asia

## **Quotation of the Week**

James “Doc” Reichenbach, a biker lobbyist from Florida

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### **1**

“Health law may get an update”

Anchorage Daily News (11/30/04) Ann Potempa

<http://www.adn.com/alaska/story/5855144p-5771192c.html>

Health officials in Alaska recently announced plans to update the state’s quarantine laws. In January, the governor will introduce legislation giving health officials greater authority to act quickly to stop the spread of emerging diseases. For many years, Alaska has updated its public health laws one small section at a time, most recently to address isolation of suspected SARS patients. But health officials say the new legislation is needed to make quarantine rules more flexible. “We need to be prepared now so that we’re able to act quickly, with unquestioned authority, and protect the public from unnecessary death and disability,” said state health Commissioner Joel Gilbertson. The new legislation will protect individual rights and strengthen confidentiality requirements for records, state officials said. A draft of the legislation will be made available to the public in January, followed by hearings to allow health care providers and the public to discuss the proposal. “We’re going to need [the public’s] help. This is not going to be an easy piece of legislation to pass during the next session,” Gilbertson said.

[Editor’s note: We will post the Alaska legislation on the CDC Public Health Law web site as soon as it is available. See <http://www.phppo.cdc.gov/od/phlp/>.]

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### **2**

“Schools will reward kids who eat right”

Associated Press (11/30/04) Carolyn Thompson

<http://www.phillyburbs.com/pb-dyn/news/94-11302004-408938.html>

A Buffalo, New York school district is taking a new approach to the war on obesity by offering rewards to kids who make healthy food choices at lunch. The program, which begins in January, will offer bracelets, key chains, or other small rewards to children who choose fruits and vegetables in the lunch line. The district-wide effort also involves teaching students the benefits of eating better. The plan emphasizes the positive, rather than using scare tactics, to educate students and make nutrition fun and engaging, according to Gretchen Fierle of the P2 Collaborative of Western New York, a coalition of managed care organizations and community leaders working on the program. The program, called “Be a Power Eater: The Good Food for Great Kids Program,” costs \$450,000, and will last six weeks. Different schools in the district will take different approaches to see what works best. Students will also be encouraged to continue the healthier eating habits at home, Fierle said.

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“Auto recall efforts under scrutiny”

Associated Press (11/30/04) Dee-Ann Durbin

[http://fsnews.findlaw.com/articles/ap\\_stories/other/1110/11-30-2004/20041130113010\\_10.html](http://fsnews.findlaw.com/articles/ap_stories/other/1110/11-30-2004/20041130113010_10.html)

Federal law has required automakers to provide free repairs for safety-related defects since 1966. Now, some safety experts are calling on automakers and federal regulators to develop a better system for announcing and tracking vehicle recalls and the corresponding repairs. “California requires that whenever you go in for registration, they check what emissions recalls have been done. If you can do it for emissions recalls, you can do it for safety recalls,” said Clarence Ditlow of the Center for Auto Safety, an advocacy group. According to the National Highway Traffic Safety Administration (NHTSA), only 72% of recalled vehicles are actually repaired each year, leaving many recalled vehicles unrepaired and possibly dangerous. For the year 2003, the number of recalled, but unrepaired, vehicles was about 5.3 million. NHTSA requires that car manufacturers submit their repair rate data to the agency for six quarters after sending a recall notification to owners. If the rate of repair is exceptionally low, NHTSA can require the manufacturers to send a second notice. NHTSA wants to increase the repair rate, according to Kathy DeMeter, NHTSA’s director of defect investigations. Safety advocates agree that more action is needed to improve the repair rate for recalled vehicles, including issuing recall lists by vehicle identification number, increasing publicity about NHTSA’s recall information, and putting stronger language into recall notices.

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“Cigarette taxes rising across the country”

Cavalier Daily (U. Va.) (12/06/04) Jon Breece

<http://www.cavalierdaily.com/CVArticle.asp?ID=21721&pid=1230>

Over the past three years, almost every state has taken steps to fight smoking by increasing cigarette taxes. Seven states increased tobacco taxes during 2004. Virginia, a traditional tobacco-growing state, hiked its tax by 17.5 cents per pack this year, and the state plans to impose another 10-cent hike next year, bringing the total to 30 cents. Prior to the hike, Virginia had the lowest tax rate in the nation -- 2.5 cents per pack -- and had not increased the tax since 1960. But, with the nation's average cigarette tax standing at 84 cents, Virginia's rate still ranks only 45<sup>th</sup> highest among states, even after this year's increase. The average tax rate among major tobacco-producing states is 15.3 cents -- much lower than the national average, according the Campaign for Tobacco Free Kids. Kentucky, another tobacco producing state, has not increased its cigarette tax in 30 years, and at 3 cents per pack, it has the lowest tax in the United States. Health officials in Virginia say the new tax increase will bring both fiscal and health benefits to the state. Studies show that a 10% increase in the total price of a pack of cigarettes reduces overall consumption by 4%, according to Danny McGoldrick, research director for the Campaign for Tobacco Free Kids. Every state that has increased tobacco taxes has seen revenue go up, even though cigarette consumption has gone down, he added. "It's a win-win situation -- a win for public health and a win for state budgets."

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"HHS: German flu vaccine safe for U.S."

Associated Press (12/07/04) Mark Sherman

[http://story.news.yahoo.com/news?tmpl=story&cid=514&e=3&u=/ap/20041207/ap\\_on\\_h\\_e\\_me/cdc\\_flu\\_vaccine](http://story.news.yahoo.com/news?tmpl=story&cid=514&e=3&u=/ap/20041207/ap_on_h_e_me/cdc_flu_vaccine)

U.S. Health and Human Services Secretary Tommy Thompson announced Tuesday that the government will buy 1.2 million doses of the German flu vaccine Fluarix, and it will be available later this month. An additional 3 million doses from GlaxoSmithKline are expected to be available later. Fluarix, manufactured in Germany, has not been licensed for use in the U.S., but will be made available as an "investigational new drug (IND)." Vaccine recipients will have to sign a consent form acknowledging that the vaccine is not licensed. FDA has inspected the Fluarix manufacturing facility in Germany and tested the vaccine's effectiveness for the dominant strain of flu expected in the U.S. The agency also checked to ensure that the vaccine was stored properly, officials said. Meanwhile, CDC Director Julie Gerberding cautioned health care providers to remain alert, despite the slow start to this year's flu season. "A slow start doesn't necessarily reflect a slow season," she said.

[Editor's note: For more information on influenza and flu vaccine, visit <http://www.cdc.gov/flu/>.]

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"Risky riders touting freedom, bikers take aim at helmet laws"

The Wall Street Journal (12/01/04) Karen Lundegaard

<http://online.wsj.com/article/0,,SB110186523996987638-email,00.html> (subscription required)

Over the past three decades, biker lobbyists have successfully fought to weaken or eliminate mandatory helmet laws in 29 states. In just the past seven years, five states have repealed laws requiring motorcyclists to wear helmets, and federal statistics show that motorcycle deaths have increased as a result. In this year alone, four additional states came close to repealing their helmet laws. In many states, biker activists have spearheaded the repeals, as they have become more sophisticated at lobbying legislators. One activist called “Sputnik,” who sports a tattoo on his forehead, has traveled to 39 states touting his “Five Steps to Freedom,” a plan to register anti-helmet bikers and ultimately get them elected to local political offices. Bikers argue that helmets impair their vision and hearing, are too hot in the summer, and that research statistics on the safety benefits of helmets are manipulated. Currently, only 20 states plus the District of Columbia require helmets for all riders. Thirty other states have lesser helmet requirements, such as for young or inexperienced riders, or those without sufficient insurance. Studies show that motorcycle deaths have more than doubled in states that have repealed their helmet laws. A *Wall Street Journal* study found that the motorcycle death rate jumped by 30% in Texas and 21% in Florida after helmet law repeals (adjusted for increased use of motorcycles). One state, Louisiana, recently reinstated its helmet law after seeing a 74% increase in fatalities when helmet use became voluntary.

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“These routes aren’t made for walking”

The Los Angeles Times (12/03/04) Caitlin Liu

<http://www.latimes.com/news/local/la-me-ped3dec03,1,5638323.story?coll=la-headlines-california>

A new study has shown that walking is the deadliest form of travel in the U.S., particularly in Florida, New York, and California. The nonprofit Surface Transportation Policy Project conducted the study, which counted the percentage of pedestrians among traffic deaths. “It is simply too dangerous to walk in America’s cities. Since we’re such a large percentage of accidents and fatalities, why aren’t we spending a larger percentage on pedestrian safety?” asked Andy Hamilton, president of pedestrian advocate group America Walks. The study found that pedestrian death rates for seniors, minorities, and children are all disproportionately high. Florida’s death rate is particularly high, perhaps because the state has such large senior citizen and minority communities. While the study did not examine why some areas have better safety records than others, experts said demographics, planning, and safety programs all play a role in pedestrian safety. “Unfortunately, our design, our transportation system, our housing is not friendly to pedestrians for the most part,” said Hasan Ikhata, director of transportation policy planning for the Southern California Association of Governments.

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“Global anti-tobacco treaty will come into force in 2005”

Associated Press (12/01/04)

<http://online.wsj.com/article/0,,SB110193331612388356-email,00.html>

Peru has become the 40<sup>th</sup> and final country needed to implement a global anti-tobacco treaty that will limit advertising and require strong new warning labels on cigarettes. The WHO Framework Convention on Tobacco Control (FCTC) requires that 40 ratifying countries take steps to cut the number of deaths from tobacco-related illnesses, by restricting tobacco advertising and sponsorship, limiting the use of terms like “low-tar” and “light,” raising tobacco taxes, and reducing secondhand smoke. The FCTC will enter into force on February 28, 2005, 90 days after the final ratification. One hundred twenty-eight other countries that have signed the FCTC but have not yet ratified it, according to WHO. “For us at WHO it’s a historic moment. It’s the world’s first significant health treaty. It’s a moment we hope will change global health,” said Denis Aitken, a senior aide to WHO chief Lee Jong-Wook.

[Editor’s note: For more information on the FCTC, visit

<http://www.who.int/tobacco/framework/countrylist/en/>.]

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#### **BRIEFLY NOTED**

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Florida: Unapproved wrinkle treatment may have caused botulism poisoning  
“Inquiry looks at illegal injections”

South Florida Sun-Sentinel (12/03/04) Bob LaMendola

<http://www.sun-sentinel.com/news/local/palmbeach/sfl-pcbotox03dec03,0,7418562.story?coll=sfla-news-palm>

Minnesota: Judge will allow “light” cigarette lawsuit to proceed  
“Philip Morris loses ruling in Minnesota”

The Los Angeles Times (12/02/04)

<http://www.latimes.com/business/printedition/-4.archive>

Oklahoma: University of OK to ban drinking at residence halls, fraternities  
“Death leads to university alcohol ban”

Associated Press (12/02/04)

<http://www.cnn.com/2004/EDUCATION/12/02/campus.drinking.ap/>

National: FDA’s safety monitoring system examined

“At FDA, strong drug ties and less monitoring”

The New York Times (12/06/04) Gardiner Harris

<http://www.nytimes.com/2004/12/06/health/06fda.html>

National: FDA to launch new rules for food companies

“Government launches rules to track food supply”

Associated Press (12/06/04)

<http://www.kesq.com/Global/story.asp?S=2655670>

National: Environmental groups sue EPA over rat poison

“Groups sue U.S., saying regulations for rat poison endanger children”

The Chicago Sun-Times (12/06/04) Stephanie Zimmerman

<http://www.suntimes.com/output/news/cst-nws-rat06.html>

National: Midwestern states see flu shot surplus after successful rationing program

“Still need a flu shot? State has a surplus”

The Chicago Tribune (12/04/04) John Chase and Susan Kuczka

<http://www.chicagotribune.com/news/local/chi-0412040203dec04,0,5457526.story?coll=chi-news-hed>

National: Three states ease flu shot restrictions

Massachusetts: <http://news.bostonherald.com/localRegional/view.bg?articleid=56739>

Michigan: [http://www.freep.com/news/latestnews/pm1674\\_20041206.htm](http://www.freep.com/news/latestnews/pm1674_20041206.htm)

Minnesota: <http://www.kstp.com/article/stories/S4640.html?cat=1>

International: Prison conditions fuel AIDS epidemic, activists say

“Prison drug use, unprotected sex fueling AIDS epidemic in Asia”

Associated Press (12/01/04) Michael Casey

<http://www.sfgate.com/cgi-bin/article.cgi?file=/news/archive/2004/12/01/international0324EST0444.DTL&type=health>

### **\_\_\_\_\_PHL NEWS QUOTATION OF THE WEEK\_\_\_\_\_**

“We’ve learned the game so well that now we’re making the rules.”

-- James “Doc” Reichenbach, a bearded biker lobbyist from Florida, explaining his skill at repealing helmet laws in the states. In the past three decades, biker lobbyists have succeeded in repealing or weakening helmet statutes in 29 states, despite evidence that such repeals increase motorcycle-related traffic deaths. Bikers have argued successfully that helmet use should be a personal choice [see item 6, above].

### **\_\_\_\_\_THE WEEKLY READING: NUMBER 16\_\_\_\_\_**

Each week for 26 weeks, the Weekly Reading provides *News* subscribers with an illustrative reading in public health law. In each issue, we post a short description and link to the reading and a quiz question. The readings are selected to provide a basic familiarity with public health law.



Reading 16: “The Path of the Law,” by Oliver Wendell Holmes, Jr. (1897). For this week’s reading, we take a break from legal cases and a diversion into legal theory. “The Path of the Law,” by Oliver Wendell Holmes, Jr., was published in the *Harvard Law Review* in 1897.

Holmes was born in Boston in 1841. His father was the famous writer and physician. Early in his career, Holmes taught at the Harvard Law School and became a well-known thinker and writer on legal subjects. He was appointed to the Massachusetts Supreme Court in 1899. In 1902, President Theodore Roosevelt appointed him to the U.S. Supreme Court, where he had a profound influence on American legal thought for over 30 years.

In “The Path of the Law,” Holmes explains his theory of the law. The law, he says, is not pretentious. It is nothing more than “[t]he prophecies of what the courts will do ....” Furthermore, “a legal duty so called is nothing but a prediction that if a man does or omits certain things he will be made to suffer in this or that way by judgment of the court....” Holmes goes on to describe the confusion between law and morality, and the fallacy, as he calls it, that the development of law is based on logic. Experience and tradition, he argues, play major roles. Holmes then discusses the state of legal study in his time.

Holmes’ essay provides a fascinating perspective on the theory of law from one of the great American jurists. It is written in a conversational style that can be easily understood by non-lawyers.

Click here for reading 16: <http://www.phppo.cdc.gov/od/phlp/PHlawreadings.asp>.

Question on Reading 16 (the answer will be provided in next week's issue): Holmes says the right way for students of the law to gain a liberal view of the subject is to “get to the bottom” of it. What is Holmes’ six-step prescription for “getting to the bottom” of the law?

Answer from last week's reading (*Camara v. Municipal Court*). Question: Would the Court’s findings in the case prevent a city official from doing a warrantless inspection in an emergency? Why? Answer: The Court specified that its decision would not invalidate a warrantless search in case of emergency. Such a search is likely to pass the Fourth Amendment test that searches be “reasonable.”

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